

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Request by Progeny LMS, LLC for Waiver of)	WT Docket No. 11-49
Certain Multilateration Location and Monitoring)	
Service Rules)	

COMMENTS OF NEW AMERICA FOUNDATION AND PUBLIC KNOWLEDGE

New America Foundation's Open Technology Institute and Public Knowledge ("NAF/PK") hereby provide Comments in response to the November 20, 2012 Public Notice issued in this proceeding.¹ The Public Notice invites comment on three joint test reports submitted by Progeny and each of Itron, Inc., Landis + Gyr Company and the Wireless Internet Service Providers Association.

NAF/PK have reviewed the test reports and the record in this proceeding, including *ex parte* letters filed since the test reports were submitted to the Commission. Based on this review, we believe that it appears likely that the operation of Progeny's system would adversely impact the operational performance of unlicensed smart grid and broadband wireless devices. The test results suggest potentially devastating consequences for unlicensed use of the only contiguous unlicensed band currently available in superior propagation frequencies below 1 GHz, effectively removing 4 MHz (of 26 MHz) of spectrum from unlicensed use in the 902-928 MHz band. Millions of Part 15 devices are already deployed in this relatively small 900 MHz unlicensed band and provide vital communications services to consumers every day. Adding a licensed and interfering service to the rich ecosystem of unlicensed consumer devices would, according to the

¹ *Public Notice*, "The Wireless Telecommunications Bureau and the Office of Engineering and Technology Seek Comment on Progeny's Joint M-LMS Field Testing Reports," WT Docket No. 11-49, DA 12-1877, rel. Nov. 20, 2012.

test reports, be extremely disruptive. Among other things, a reduction in broadband throughput of more than 50% would drastically restrict the broadband experience for many consumers, many of whom may have no other choice in how they receive broadband.

If Progeny is granted its request, this could set the precedent for other M-LMS licensees to seek similar waivers, raising the potential of removing an additional 8 or more MHz spectrum from unlicensed use. Any such outcome would be contrary to the band plan the Commission created when adding the M-LMS service. Progeny LMS, LLC and other potential commercial users of the 902-928 MHz band have been on notice since the M-LMS Recon Order “that LMS systems are not operated in such a manner as to degrade, obstruct or interrupt Part 15 devices to such an extent that Part 15 operations will be negatively affected.”²

A productive balance between licensed and unlicensed access to spectrum depends in part on the availability of unlicensed spectrum with a variety of propagation characteristics. While there is considerable contiguous unlicensed spectrum above 5 GHz, there is a scarcity of unlicensed spectrum below 1 GHz – and, other than the 900 MHz band, none that is contiguous. Although the TV band Incentives Auction proceeding holds out the possibility of two or three contiguous unlicensed channels in the 600 MHz band (guard bands and/or Channel 37), the outcome of that proceeding is unknown and, even under the Commission’s proposal, the contiguous unlicensed channels would be very narrow and very low power. Therefore, before Progeny’s proposal is authorized, it is imperative that the Commission require transparent, cooperative and comprehensive testing that demonstrates with absolute certainty that unlicensed use of the 900 MHz band for rural broadband provision, smart grid and uses in the public interest will not be degraded or deterred as a result.

² *First M-LMS R&O*, 10 FCC Rcd at 4737; see also, *In the Matter of Amendment of Part 90 of the Commission’s Rules to Adopt Regulations for Automatic Vehicle Monitoring Systems*, Order on Reconsideration, 11 FCC Rcd 16907, 16911-12 (1996) (“*M-LMS Recon Order*”).

Furthermore, NAF/PK that Progeny did not engage in cooperative testing of indoor consumer devices, such as baby monitors, emergency alert devices, wireless headphones, and other devices that share the 900 MHz band with other Part 15 devices. The tests would thus appear to be incomplete. Logically, because there is substantial interference to higher-power outdoor devices, the impact on lower-power indoor devices could be even more profound. Therefore, if the Commission does not agree that there are “unacceptable levels of interference” based on the three test reports, there is enough evidence to suggest that Progeny should undertake additional testing of indoor Part 15 devices.

December 21, 2012

/s/
John Bergmayer
Senior Staff Attorney
Public Knowledge
1818 N Street, NW
Suite 410
Washington, DC 20036

Respectfully submitted,

/s/
Michael Calabrese
Director, Wireless Future Project
Open Technology Institute
New America Foundation
1899 L Street, NW 4th Floor
Washington, DC 20036